

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID A. MANNERS and DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, Jacksonville, FL

*Docket No. 02-919; Submitted on the Record;  
Issued January 24, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits; and (2) whether the Office abused its discretion in denying appellant's request for reconsideration.

On September 8, 1997 appellant, then a 44-year-old claims examiner, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that date he slipped on a wet floor, sustaining injuries to his left knee/leg, low back, both hips and both wrists. By letter dated December 18, 1997, the Office accepted appellant's claim for low back strain; contusion left knee; and multiple contusion/strain wrists, hips and left shoulder.

On May 11, 1999 Dr. Michael P. O'Neill, a Board-certified radiologist, conducted a magnetic resonance imaging (MRI) scan on appellant's left knee and concluded that he had mild degenerative changes of the left knee, with no ligamentary or meniscal tears identified.

On September 27, 1999 the Office referred appellant to Dr. Abraham Rogozinski, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated October 18, 1999, Dr. Rogozinski gave his impressions as degenerative disc disease of the lumbosacral spine and mild osteoarthritis of the left knee. He further noted:

"With regards to your questions, I do feel that [appellant] had a preexisting low back condition. The current condition is as listed above. I do not feel his current complaints are a result of the September 8, 1997 injury. There were no medical findings to support that the low back strain is still active and causing objectively demonstrable findings. I feel it is [appellant's] preexisting degenerative disc disease and degenerative arthritis of the knee which accounts for his current back and knee complaints.

On December 13, 1999 the Office issued a notice of proposed termination of medical benefits based on Dr. Rogozinski's opinion. This proposed termination was finalized by decision dated March 7, 2000.

By letter dated March 17, 2000, appellant requested an oral hearing which was held on August 17, 2000. In a decision dated October 31, 2000, the hearing representative affirmed the March 7, 2000 decision, noting that the weight of the medical evidence rested with the opinion of Dr. Rogozinski.

By letter dated June 14, 2001, appellant requested reconsideration. In support of his request, appellant submitted numerous documents that the Office had reviewed previously. Appellant also submitted an April 10, 2001 medical report of an MRI scan on appellant's left knee by Dr. Carlos Rivera, a Board-certified radiologist, who interpreted a type II meniscoid degeneration in the medial and lateral menisci, without evidence of complete tear. He further noted increased signal intensity in the anterior cruciate ligament which was normal in morphology and caliber, which he believed represented an imaging variant. Appellant also submitted office records by Dr. Fady El-Bahri, a Board-certified orthopedic surgeon, dated April 10 and 12, 2001. In his April 10, 2001 report, Dr. El-Bahri diagnosed left sacroiliac joint sprain and internal derangement of the left knee. He recommended a repeat MRI scan. After reviewing Dr. Rivera's MRI scan, in notes dated April 12, 2001, Dr. El-Bahri noted disc protrusion at L5-S1 and left knee internal derangement. Appellant also submitted an operative report indicating that, on May 11, 2001, he underwent an exploration of the left back with excision of a soft tissue mass.

Appellant submitted a medical report dated February 28, 2001 from Dr. Douglas M. Pennington, an osteopath, who noted that he was appellant's treating physician with regard to the injury he received on September 8, 1997. He noted that appellant had a bulging of his L4-5 disc. He further stated:

"It is my opinion that [appellant] suffered a permanent injury to his lumbar spine as well as his left knee as a direct result of his injury in September 1997. It is well documented that trauma can produce degenerative changes to joints, which do not become apparent for several years. Since his fall in 1997 can be directly traced to his current complaints and he has no prior history of other injuries and the degenerative changes did not show up in films at the time of initial injury, only later, I can conclude that his fall of 1997 was the initiating incident to his current problems."

In a decision dated August 23, 2001, the Office found that the evidence submitted by appellant was insufficient to warrant modification of its previous decision.

By letter dated October 22, 2001, appellant again requested reconsideration and submitted various medical reports that were already in the record. By decision dated January 10, 2002, the Office denied appellant's request for reconsideration as it found that the evidence to be repetitious and/or irrelevant and insufficient to warrant review of its prior decision.

The Board finds that the Office properly terminated appellant's compensation by decision dated March 7, 2000.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to employment.<sup>1</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>2</sup>

In the instant case, the Office terminated appellant's compensation based on Dr. Rogozinski's medical report in which he opined that appellant's current complaints were not the result of the September 8, 1997 injury. He stated that there were no medical findings to support that appellant's low back strain was still active, and that he believed that appellant's preexisting degenerative disc disease and degenerative arthritis of the knee was the cause of his current back and knee complaints. Dr. Rogozinski's medical report is rationalized and based on an accurate factual and medical background. Therefore, the Board finds that his medical report was sufficient to establish that appellant no longer had any disability causally related to his September 8, 1997 employment injury.

The Board further finds that a conflict in the medical evidence was created between appellant's treating physician, Dr. Pennington, and Dr. Rogozinski, the second opinion physician, subsequent to the Office's decision to terminate appellant's compensation. Appellant submitted Dr. Pennington's opinion in support of his request for reconsideration. Dr. Pennington is in disagreement with Dr. Rogozinski about whether appellant has any residuals from his September 8, 1997 injury. Whereas Dr. Rogozinski found that appellant's current condition was caused by his degenerative disc disease and degenerative arthritis of the knee, not his work-related injury; Dr. Pennington opined that appellant's current conditions are directly related to his work injury.

Where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.<sup>3</sup> Based on the above-referenced conflict in the medical evidence between Drs. Pennington and Rogozinski, the Board finds that the Office should have referred appellant's case for an impartial medical examination.<sup>4</sup>

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<sup>1</sup> *Martin T. Schwartz*, 48 ECAB 521, 522 (1997).

<sup>2</sup> *Id.*

<sup>3</sup> 5 U.S.C. § 8123(a); *see also Lawrence C. Parr*, 48 ECAB 445, 453 (1997).

<sup>4</sup> *See Craig M. Crenshaw, Jr.*, 40 ECAB 919 (1989) (finding that the Office failed to meet its burden of proof because a conflict in the medical evidence was unresolved).

On remand, the Office should prepare a statement of accepted facts and refer it, together with appellant and the case record, to a Board-certified specialist in the appropriate field of medicine, to resolve the conflict pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, a *de novo* decision should be issued on whether appellant has any continuing disability causally related to his September 8, 1997 injury.

The decisions of the Office of Workers' Compensation Programs dated January 10, 2002 and August 23, 2001 are affirmed regarding the termination of appellant's compensation and are hereby set aside, and the case is remanded for further consideration consistent with this opinion regarding the issue whether appellant has any continuing disability causally related to his September 8, 1997 employment injury.<sup>5</sup>

Dated, Washington, DC  
January 24, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> Due to the disposition of this issue, it is not necessary for the Board to address whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 10, 2002.